

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b))	
Table of Allotments,)	MB Docket No. 02-263
FM Broadcast Station.)	RM-10498
(Safford and Eagar, Arizona) ¹)	RM-10606
)	
)	
)	

REPORT AND ORDER

Adopted: January 15, 2003

Released: January 21, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division considers herein the *Notice of Proposed Rule Making* (“Notice”)² which included the captioned proceeding. The *Notice* set forth eight separate proposals to allot FM channels to eight specific communities.³ Graham County FM Associates (“Graham County”) filed a Petition for Rule Making requesting the allotment of Channel 246C3 at Safford, Arizona, as that community’s second local aural transmission service (RM-10498). Graham County filed no comments in response to the *Notice*. A counterproposal was filed by Eagar Broadcasting seeking the allotment of Channel 246C to Eagar, Arizona, as that community’s first local aural transmission service. 3 Point Media – Arizona, L.L.C. filed comments and Arizona Radio Partners, LLC and NPR Phoenix, LLC filed joint reply comments in response to the *Public Notice*.⁴

2. Since comments were not received from Graham County, or any other party, supporting the allotment of Channel 246C3 at Safford, Arizona, we will dismiss the Petition for Rule Making and refrain from allotting Channel 246C3 at Safford, Arizona. As stated in the Appendix to the *Notice*, a showing of continuing interest is required before a channel will be allotted. It is the Commission’s policy to refrain from making a new allotment to a community absent an expression of interest.

3. On December 30, 2002, Eagar Broadcasting filed a Request for Approval of Withdrawal (“Withdrawal”) of the counterproposal submitted in this proceeding. In its Withdrawal, Eagar Broadcasting stated that it has entered into a settlement agreement with 3 Point Media-Arizona (“3 Point Media”). 3 Point

¹ The community of Eagar, Texas was added to the captioned.

² *Dickens, Texas et al.*, 17 FCC Rcd 16350 (MB 2002).

³ The proposals set forth in the multiple *Notice* were not mutually exclusive with each other. A separate *Report and Order* has been issued in the Dickens, Texas proceeding (MB 02-258), Floydada, Texas proceeding (MB 02-259), Rankin, Texas proceeding (MB 02-262), San Diego, Texas proceeding (MB 02-264), and Westbrook, Texas proceeding (MB 02-265). See *Dickens, Texas et al.*, 17 FCC Rcd 22530 (MB 2002). A separate *Report and Order* will be issued in the Freer, Texas proceeding (MB 02-260) and the Ozona, Texas proceeding (MB 02-261).

⁴ Report No. 2583 released on November 20, 2002.

Media has agreed to reimburse Eagar Broadcasting for its reasonable and legitimate expenses relating to the preparation, filing and prosecution of its counterproposal filed in this proceeding. In compliance with Section 1.420(j) of the Commission's Rules, Eagar Broadcasting submitted a copy of the settlement agreement which is subject to Commission approval.

4. The settlement agreement stated that 3 Point Media agrees to pay Eagar Broadcasting \$5,000 for expenses incurred in preparation, filing, and prosecution of its counterproposal that proposed the allotment of Channel 246C at Eagar, Arizona in exchange for the withdrawal of the counterproposal. The settlement agreement contained a declaration from the owner of Eagar Broadcasting, Kristen Smith, certifying that neither Eagar Broadcasting nor the owner have received or will receive any money or other consideration in excess of their legitimate and prudent expenses incurred in the preparation, filing and prosecution for the expression of interest in this rule making. Eagar Broadcasting filed a Supplement to the Request for Approval of Withdrawal which contained an itemization of Eagar Broadcasting's legitimate and prudent expenses in excess of the \$5,000 payment. Additionally, the settlement agreement contained a declaration from 3 Point Media certifying that neither 3 Point Media nor any of its principals had paid nor promised to pay any money or other consideration to Eagar Broadcasting or any of its principals in excess of its legitimate and prudent expenses incurred in the preparation, filing and prosecution of the counterproposal filed by Eagar Broadcasting in this proceeding. Moreover, 3 Point Media declaration states that there are no oral agreements relating to the dismissal or withdrawal of the counterproposal filed by Eagar Broadcasting.

5. In view of the above, we will approve the settlement agreement between Eagar Broadcasting and 3 Point Media and grant the Request for Approval of Withdrawal of the counterproposal filed by Eagar Broadcasting proposing the allotment of Channel 246C at Eagar, Arizona, as that community's first local FM service. A showing of continuing interest is required before a channel will be allotted. As stated above, it is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Therefore, we will not allot Channel 246C to Eagar, Arizona.

6. IT IS ORDERED, That the Request for Approval of Withdrawal of the counterproposal filed by Eagar Broadcasting proposing the allotment of Channel 246C at Eagar, Arizona IS GRANTED.

7. IT IS FURTHER ORDERED, That the above mention Petition for Rule Making filed by Graham County FM Associates (RM-10498), IS DISMISSED.

8. IT IS FURTHER ORDERED, That the counterproposal filed by Eagar Broadcasting (RM-10606), IS DISMISSED.

9. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Imaging Center, SHALL SEND a copy of this *Report and Order* by Certified Mail, Return Receipt Requested to:

Graham County FM Associates
c/o Dan J. Alpert
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Eagar Broadcasting
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3 Point Media-Arizona, LLC
c/o Bruce Buzil
980 North Michigan Avenue, Suite 1880
Chicago, IL 60611

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau